



Legislative Bulletin.....June 19, 2003

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H.R. 660—Small Business Health Fairness Act of 2003

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Order of Business: The bill is scheduled for consideration on Thursday, June 19th, under a modified closed rule. The rule makes in order one amendment in the nature of a substitute to be offered by Mr. Kind or his designee (described below) and one motion to recommit.

Summary: H.R. 660 creates association health plans (AHPs) under the Employee Retirement Income Security Act (ERISA), through which small employers could join together to purchase health insurance.

Requirements for AHPs:

- Must be sponsored by a permanent, bona fide organization established for substantial purposes other than to provide medical care and that does not make decisions with regard to membership, payments, or coverage based on health status.
- Must be certified under a procedure established by the Secretary of Labor. Criteria are established for plans offering a self-insured health benefit, including that sponsors may not restrict membership in the plan to one or more businesses or industries. Fully insured plans would be subject to class certification by the Secretary.
- Plans wishing to be certified would submit an application to the Secretary (along with a \$5000 filing fee for administration) with information on the states in which the plan intends to operate and with plan documents, including those describing benefits. Plans must file their certification in each state in which at least 25% of the plan's participants are located. Self-insured plans must have at least 1,000 participants in order to be certified.
- Self-insured AHPs must maintain surplus reserves of at least \$500,000 (or a greater amount set by the Secretary, but not more than \$2 million) and must obtain stop loss and indemnification insurance.
- Must pay \$5000 annually into an "Association Health Plan Fund" through which the Secretary would make payments to insurers to maintain stop loss insurance or indemnification insurance coverage if without such payments coverage under the plan would be terminated.

Requirements for AHP Sponsors:

- Must have been in existence for a continuous period of not less than three years.
- Must be operated under a three-year plan by a board of trustees. The board must consist of owners, officers, directors or employees of the employers who participate in the plan and have full fiscal control and responsibility for the plans operations.
- May voluntarily terminate plan only if the board of trustees provides 60-day advance written notice to participants and provides for timely payment of all benefit obligations.

Participation and Coverage Requirements:

- All employers who are AHP members must be eligible for participation under the terms of the plan.
- Eligible employers must be informed of all benefit options available under the plan.
- Eligible employees may not be excluded from the plan because of health status.
- Employers may not exclude employees from the plan by purchasing an individual health insurance policy for the employee based on his or her health status.

Other Provisions:

- The Secretary may become the trustee of an insolvent AHP if the Secretary determines that the plan will not be able to provide benefits or is otherwise in “financially hazardous condition” (as defined by the Secretary in regulation).
- States may collect a contribution tax from a newly established AHP to the same extent that such a tax is collected from other insurance plans.
- For certified AHPs, state law is preempted to the extent it would prevent the AHP from operating in the state. This includes exempting the AHP from state benefit mandates, except the plan must comply with any state laws requiring coverage of specific diseases.
- Penalties are established for uncertified AHPs and entities misrepresenting themselves as an AHP.

Amendment in the Nature of a Substitute (Mr. Kind or his designee): Strikes all of the current provisions of H.R. 660 and replaces them with a requirement that the Secretary establish a Small Employer Health Benefits Plan (SEHB). Requires the Secretary to widely disseminate information about SEHB through the media, Internet, public service announcements, and other employer and employee directed communications. All employers with fewer than 100 employees during the previous calendar year shall be eligible to apply for coverage under SEHB. Employers must offer coverage to all employees who have completed 3 months of service. Employees working fewer than 30 hours a week are eligible for pro rata coverage. Requires the Secretary to establish an initial open enrollment period and thereafter an annual enrollment period. Requires the Department of Labor to annually contract with state licensed health insurers to offer health insurance coverage in a state. Participating insurers shall remain subject to state laws applicable to the states in which they cover residents. Requires all participating insurers to offer benefits equivalent to or greater than the options offered to federal employees. Requires employers joining SEHB to contribute at least 50% of premium costs. Employers with fewer than 25 employees shall be eligible for a coverage incentive discount of 5% to employers joining SEHB. Small employers with fewer than 50

employees shall be eligible for a sliding scale premium subsidy for employees earning less than 200% of the poverty level (50% for firms under 10 employees; 35% for firms under 25 employees; and 25% for firms under 50 employees). Employee premiums for employees earning under 200% of the poverty level, adjusted for family size, shall be eligible for 100% subsidies for premium contribution over 5% of salary if not covered by another federal or state health insurance program. Authorizes up to \$50 billion for the Department to provide small employer health coverage subsidies in fiscal years 2004-2014.

Additional Background: The House of Representatives passed AHP legislation as part of H.R. 2563, the Patient Protection Act, in the 107th Congress. The amendment adding AHPs to the bill passed by a vote of 236-194 ([Roll Call #328](#)).

Committee Action: H.R. 660 was introduced on February 11, 2003, and referred to the Committee on Education and the Workforce. The committee marked-up and approved the bill by a vote of 26-21 on June 12.

Administration Position: On May 13, 2003, a representative from the Department of Labor testified before the Employer-Employee Relations Subcommittee of the Education and the Workforce Committee that “the Bush Administration strongly supports AHPs.” (<http://edworkforce.house.gov/hearings/108th/eeer/ahps031303/combs.htm>)

Outside Organizations: The following groups are considering H.R. 660 a key vote:

- Air Conditioning Contractors of America
- Associated Builders and Contractors
- Independent Electrical Contractors
- National Association of Convenience Stores
- National Association of Homebuilders
- National Association of Wholesaler-Distributors
- US Chamber of Commerce
- National Retail Federation
- National Restaurant Association
- National Roofing Contractors Association
- National Federation of Independent Business

Cost to Taxpayers: The Congressional Budget Office (CBO) estimates that H.R. 660 would decrease federal revenues (associated with employers adding new non-taxable health benefits instead of increasing taxable wages and salaries) by \$3 million in 2004 and \$60 million over the 2004-2008 period. CBO also estimates a net increase of about 600,000 individuals with employer-based health insurance by 2008, creating savings to the Medicaid program. CBO does not have a specific amount of savings, but estimates that it could exceed the estimated amount of revenue loss.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new section within ERISA to certify and oversee association health plans.

Constitutional Authority: The Education and the Workforce Committee, in House Report 108-156, cites federal court cases upholding ERISA as being within Congress' constitutional authority under Article 1, Section 8, Clause 3 (commerce clause).

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